

Blurred Lines Between Inspiration and Infringement: Ninth Circuit Holds "Blurred Lines" Infringes Copyright

IN SHORT

The Decision: The Ninth Circuit upheld the district court decision finding Pharrell Williams and Robin Thicke's song "Blurred Lines" infringed the copyright in Marvin Gaye's song "Got To Give It Up."

The Reasoning: Based on "settled procedural principles" and "deferential standards of review," the majority judges refused to second-guess the jury's decision that the songs at issue are substantially similar because it was not against the clear weight of the evidence.

The Implications: In creating new works, artists may consider taking additional care in using inspiration from earlier songs.

On March 21, 2018, the U.S. Court of Appeals for the Ninth Circuit upheld the district court's decision finding Pharrell Williams and Robin Thicke's song "Blurred Lines" infringed the copyright in Marvin Gaye's song "Got To Give It Up." While the dissent warned that this ruling allows an unprecedented copyright of a "musical style," the majority advised the decision was made on "narrow grounds."

Musicians Pharrell Williams, Robin Thicke, and Clifford "T.I." Harris released the hit song "Blurred Lines" in 2013. Shortly thereafter, Marvin Gaye's heirs accused them of infringing Gaye's song "Got To Give It Up." The musicians then sought a declaratory judgment that "Blurred Lines" did not infringe "Got To Give It Up," and the Gaye family countersued. In March 2015, after a seven-day jury trial, a California jury found that "Blurred Lines" infringed Gaye's song. The district court awarded the Gayes more than \$5 million in damages, as well as a 50 percent running royalty. Both parties appealed.



As the court advised, this decision is 'a cautionary tale for future trial counsel wishing to maximize their odds of success.'



In the majority opinion, the court emphasized that its "decision hinges on settled procedural principles and the limited nature of our appellate review, dictated by the particular posture of this case and controlling copyright law." The majority first addressed the elements of a copyright infringement claim: (i) ownership of a copyright in the work; and (ii) copying of protectable elements of that work, which may be shown by direct evidence of copying or access and substantial similarity.

Adhering to the "inverse-ratio rule" (i.e., "[t]he greater the showing of access, the lesser the showing of substantial similarity is required"), the majority found that the Gayes' burden of proof of substantial similarity was lowered because Williams and Thicke admitted at trial a high degree of access. Substantial similarity requires satisfaction of both extrinsic (subjective) and intrinsic (objective) tests, and the court noted it would not second-guess the jury's application of the intrinsic test. Based on "deferential standards of review," the court affirmed the copyright infringement holding.

Affirming other parts of the district court's decision, the court held that because there was a full trial on the merits, the district court's order denying summary judgment was not reviewable. Additionally, the court held the district court did not abuse its discretion in denying a new trial because jury instructions were proper, expert testimony was admissible, and the verdict was not against the clear weight of the evidence. With respect to damages, the court held they were proper and not excessive or speculative, and that the district court did not abuse its discretion in denying the Gayes an award of attorneys' fees or in apportioning costs among the parties. The court only reversed the finding that Harris, who later added a rap verse to "Blurred Lines," was vicariously liable.

In the dissent, Judge Nguyen warned that the majority allowed the Gayes to "accomplish what no one has before: copyright a musical style," establishing "a dangerous precedent that strikes a devastating blow to future musicians and composers everywhere." The majority characterized such concerns as "unfounded hyperbole," noting that the "decision does not grant license to copyright a musical style or 'groove.'"

As the court advised, this decision is "a cautionary tale for future trial counsel wishing to maximize their odds of success." Parties should therefore ensure they are reserving all procedural grounds for review of their copyright infringement cases. Furthermore, while the majority explicitly advised that their decision did not allow copyright to a musical style, caution should be taken in analyzing a new work's use of

inspiration from earlier songs.

THREE KEY TAKEAWAYS

1. Parties should carefully consider preserving issues for appeal of their copyright infringement cases, including decisions on summary judgment and motions for judgment as a matter of law.
2. Musicians may exercise additional caution in ensuring a new work is not substantially similar to earlier songs.
3. Given the deferential standards of review in the Ninth Circuit, expert testimony regarding substantial similarity and damages may be critical in a copyright infringement case.

CONTACTS



Meredith M. Wilkes
Cleveland



John G. Froemming
Washington



Anna E. Raimer
Houston



Aryane Garansi
Washington

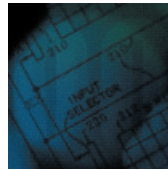
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